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7 UNITED STATES DISTRICT COURT OF THE DISTRICT OF OREGON  
8 PORTLAND, DIVISION

9 SANDRA PETERSEN and KINGWOOD,  
10 TRUST.,

11 Plaintiffs,

12 vs.

13 CITY OF MANZANITA, OREGON.

14 Defendants.

) Case No.:

) COMPLAINT –DECLARATORY  
JUDGMENT/INJUNCTION

) (Not subject to Mandatory Arbitration)

) Filing fee ORS 21.160(1)  
15 )  
16 )

17 For claim of relief against Defendant, Plaintiffs alleges as follows:  
18

19 NATURE OF THE CASE

20 This is an action seeking declaratory injunction and a permanent injunction to preclude the  
21 City of Manzanita from enforcing citations and complaints issued to Sandra J. Petersen in the total  
22 amount of \$1,811,500.00, as a violation of the due process protection against excessive fines  
23 provided for in Article VIII of the United States Constitution and Article I, Section 16, of the  
24 Oregon Constitution.

25 JURISDICTION AND VENUE

26 1. This Court has subject matter jurisdiction pursuant to 28 US C, Section 1332, in that

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1 it is a civil action between citizens of different states. The matter in controversy exceeds the sum of  
2 \$75,000.00, exclusive of interest, costs and attorney's fees.

3 2. This Court has jurisdiction pursuant to the Federal Declaratory Judgment Act, 28 US  
4 Code Sections 2201 and 2202.

5 3. Venue is proper in this judicial district pursuant to 28 US Code, Section 1399(a).  
6 where a substantial portion of the actions given rise to the claims and where the damages have  
7 occurred.

8 4. Sandra Petersen is a resident of the state of Washington. Kingwood Trust is a Trust  
9 formed and sited in the State of Washington.

10 5. Defendant is an Oregon municipality with its principal place of business is located in  
11 the state of Oregon.

#### 12 FACTUAL BACKGROUND

13 6. Kingwood Trust was organized in April of 1990, as a Washington sited Trust.  
14 Sandra Petersen is a co-trustee of the Kingwood Trust. She resides, as do the other Trustees, in the  
15 state of Washington.

16 7. In March of 1998, the Kingwood Trust purchased "parcel 3, partition plot number  
17 1992-7, recorded April 17, 1992, in plot cabinet B-339-1 of partition plot records of Tillamook  
18 County, Oregon, and being situated in Section 29, Township 3 North, Range 10 west of the  
19 Willamette, Meridian, in Tillamook County, Oregon. This property is located within the City of  
20 Manzanita, Oregon."

21 8. In 2010, the City of Manzanita adopted Manzanita City Ordinance 10-03, for the  
22 purpose of establishing rules and regulations relating to short term rentals within the City of  
23 Manzanita. Additional supplemental provisions have since been added.

24 9. When purchased the purchase price of the property was \$189,000.00. At the present  
25 time the property has a real market value according to the Tillamook County Assessor of  
26 \$395,920.00. Over the years the Trust has made the property available to friends and family of

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1 current and former Trustees of the Kingwood Trust. There are approximately 40 to 50 users of the  
2 property.

3 10. For the upkeep and supplies for the property the Trust takes a donation of \$50.00 to  
4 \$65.00, per night for the occupancy of the property. Reservations have been arranged through a  
5 website, access to which is limited to the category of friends and family.

6 11. The donations essentially covered upkeep, maintenance, repairs, and supplies for the  
7 property. A profit was not intended, or achieved, by Plaintiffs.

### 8 FIRST CLAIM

### 9 UNCONSTITUTIONAL AS APPLIED

10 12. As applied the ordinance of the City of Manzanita is unconstitutional in that it  
11 provides for excessive fines.

12 13. On October 4, 2017, the City of Manzanita issued citation and complaints against  
13 Sandra J. Petersen relating to the use of the Kingwood Trust property at 181 Edmond Way,  
14 Manzanita. For the period of January 12, 2015, through September 29, 2017, proposed penalties  
15 per the citations as follows:

16 Violation	Dates	Days	Penalty/day	Total/Citation
17 10-03/Section 2	1/12/15-12/31/16	355	\$500.00	\$177,500.00
18 10-03/Section 2	1/1/17-9/29/17	270	\$1,000.00	\$270,000.00
19 10-03/Section 2	9/30/17-11/13/17	45	\$1,000.00	\$45,000.00
20 16-03/Section 6E	8/1/16-9/29/17	425	\$1,000.00	\$ 425,000.00
21 10-03/Section 2b	1/1/17-9/29/17	270	\$500.00	\$135,000.00
22 87-5/Section 6	1/12/15-7/31/16	566	\$500.00	\$ 283,000.00

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1	16-03/Section 6A	8/1/16-9/29/17	425	\$1,000.00	\$ 425,000.00
2					
3	16-03/Section 6A	9/30/17-11/13/17	45	\$1,000.00	\$45,000.00
4	10-03/Section 2	3 nights inc. 4/5/18	3	\$1,000.00	\$3,000
5	16-03/Section 6A	3 nights inc. 4/5/18	3	\$1,000.00	\$3,000
6					
7					<u>\$ 1,811,500.00</u>

8 On April 6, 2018, the City of Manzanita issued citations and complaints against the  
9 Plaintiff, Sandra Petersen in seeking additional fines and taxes for the occurrence of April 2018,  
10 referenced in paragraph 20 herein.

11 14. Plaintiffs believed that they were not subject to this registration and tax requirement  
12 since the use of the property was not done with the expectation of a profit.

13 15. The proposed fine of \$1,811,000.00, is excessive compared to any lost revenue to Defendant  
14 and in view of the value of the property at issue. The application of the ordinances as proposed by the  
15 citations and complaints is clearly excessive and violates the US and Oregon Constitutions.

## 16 SECOND CLAIM FOR RELIEF

### 17 INJUNCTION

18 16. Plaintiff's alleges paragraphs 1-15 above.

19 17. Beginning in February of 2018, Plaintiff engaged an attorney to negotiate with the City  
20 Attorney for the City of Manzanita to resolve the citations issued by the Defendant to Plaintiff.

21 18. On or about February 28, 2018, the parties reached an agreement in principle that  
22 Plaintiff, Sandra Petersen would agree to a voluntary compliance agreement by which Plaintiffs would  
23 agree to register and be subject to the requirements of the ordinances of the City of Manzanita. There  
24 would also be a payment of \$7,500.00, by Plaintiff to the City, as well as compensating the City Attorney  
25 for fees estimated at \$1,500.00 to \$2,000.00. Additionally, Plaintiff would be on a "probation"

1 for two years.

2 19. Shortly thereafter on or about March 16, 2018, it became clear that the City wished to  
3 keep open the \$1,811,500.00, claim to assure compliance.

4 20. On or about April 5, 2018, a “friend and family member,” unbeknownst to Plaintiffs,  
5 reserved the property under her name...but allowed a friend of hers to use the property. Payment of  
6 the \$65.00, donation was paid to the “friend and friend member.” When the City of Manzanita learned  
7 that the property was being used by someone other than the owner of the property, another citation was  
8 issued to Plaintiff, Sandra Petersen. Defendant has subsequently, on or about April 20, 2018, approved  
9 the terms of the settlement claimed to have been reached February 28, 2018,” nunc pro tunc” to that date.  
10 The City then treated the incident of April 5, 2018, as a new violation which violates the terms of the  
11 agreement. The City now wishes to impose a penalty or fine of more than \$1,811,500.00.

12 21. The stated fine or penalty is clearly excessive and is arbitrary, as well. On or about  
13 April 20, 2018, the City proposed a penalty of \$188,150.00 (which represented 10% of the penalties  
14 previously proposed, plus an additional penalty related to the April 5, 2018, occupancy.) With that  
15 the City stated it was willing to negotiate but that there would be a floor of \$94,075.00, plus attorney’s  
16 fees for the City, plus taxes of \$4,620.42, and that there would be a term of probation of 60 months,  
17 during which the balance of that total proposed penalty would be demanded if there was a violation  
18 of the terms of Plaintiffs’ probation.

19 Plaintiff seeks permanent injunction to preclude the City of Manzanita to impose the penalty  
20 of \$188,150.00.

21 WHEREFORE, Plaintiffs seek a declaratory judgment and determination that the  
22 ordinances of the City of Manzanita, 10-03/Section 2, 10-03/Section 2b, 16-03/Section 6e and 16-  
23 03/Section 6A are unconstitutional as proposed to be applied against Plaintiffs.

24 Plaintiffs also seek a permanent injunction precluding Defendant from enforcing the  
25 pending claims against Plaintiffs.

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1 On Plaintiffs' claim for a permanent injunction, Plaintiffs seek the determination that the  
2 application of the proposed penalties by the City of Manzanita are contrary to law and would be  
3 illegal and unenforceable violation of the Eighth Amendment to the US Constitution and Article 1,  
4 Section 16 of the Oregon Constitution.

5 For other relief as the Court may deem just and for costs and disbursements incurred in this  
6 proceeding.

7 Plaintiff requests a jury trial for any issues that are trial able by jury.

8 Dated this 27 day of June, 2018.  
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10 Submitted by:

  
Kevin O'Connell, OSB No. 66092  
Hagen O'Connell & Hval LLP  
8555 SW Apple Way, Suite 300  
Portland, Oregon 97225  
Telephone: (503) 227-2900  
Facsimile: (503) 227-3870  
[koconnell@hagenoconnell.com](mailto:koconnell@hagenoconnell.com)